*THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

+WRIT PETITION NO.20484 OF 2004

%Dated 19-04-2005

Manne Prasad

….PETITIONER

Vs.

1.The Election Officer, R.S. Rangapuram Village,

Bethamcherla Mandal, Kurnool District and others

…RESPONDENTS.

<GIST

>HEAD NOTE:

! Counsel for the petitioner: MR.J. JANAKI RAMI REDDY

^Counsel for the Respondents 1 to 3: GP FOR PANCHAYAT RAJ

& RURAL DEVELOPMENT.

? Cases referred

1. AIR 2002 SC 2345
2. 2001 (1) ALT 235

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR. JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 20484 of 2004

Between:

Manne Prasad, S/o. M. Maddaiah, aged about 28 years, occupation: Agriculture,
R/o. Rangapuram Village, Bethamcherla Mandal, Kurnool District.

PETITIONER

AND

1 The Election Officer, R.S. Rangapuram Village, Bethamcherla

Mandal, Kurnool District.
2 The District Collector/District Chief Election Officer, Kurnool.
3 Gummagalla Raju, S/o. Madduleti, aged about 33 years, R/o R.S.

Rangapuram Village, Bethamcherla Mandal, Kurnool District.

RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Certiorari, to call for the records in connection with the order dt. 5-8-2004 passed in O.P.NO.6/2001 on the file of the Junior Civil Judge-Cum-Election Tribunal, Dhone, Kurnool District and quash the same as illegal, arbitrary, unconstitutional and consequently set aside the proceedings bearing Roc.No.871/Pts.A1/02 dt. 15-9-2004 issued by the 2nd respondent.

Counsel for the Petitioner: MR.J.JANAKI RAMI REDDY

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following:

ORDER:

This petition is filed questioning the order of the Election Tribunal (Junior Civil Judge, Dhone) in election O.P.No.6 of 2001.

For the elections held to the post of Sarpanch, Grampanchayat of R.S.Rangapuram village, 3rd respondent, Mannan Nagaseshudu and others filed nominations and contested the election, Mannan Nagaseshudu was declared elected as Sarpanch in that election. Questioning the election of the said M.Nagaseshudu, third respondent filed the above election petition on the ground that Nagaseshudu is disqualified to hold the post of Sarpanch as he has more than two children and for the malpractices alleged against him. Though Nagaseshudu died after filing of the election petition, without considering the question whether the cause of action survived or not and without bringing on record any of the representative of Nagaseshudu on record, the Tribunal proceeded with the trial of the election petition and recorded the evidence adduced by the 3rd respondent and held that as Nagaseshudu was having more than two children, he was disqualified to hold the post of Sarpanch, and declared the third respondent elected for the post of Sarpanch of R.S.Rangapuram village. Questioning the said decision, petitioner who is the brother of Nagaseshudu filed this petition.

The main contention of the learned counsel for the petitioner is that since third respondent did not make the other candidates who contested the election, parties to the election petition, the tribunal was in error in declaring the third respondent elected to the post, ignoring Rule 4 of the Rules framed in G.O.Ms.No.111 Panchayat Raj, Rural Development & Relief (Election Tribunals in respect of

Grampanchayats, Mandal Parishads and Zilla Parishads Rules, 1995 (herein after called rules) He placed strong reliance on Prakash Khandre v. Dr.Vijaya Kumar Khandre and others () where the apex court held that in cases where more than two candidates contest an election, if, after trial, the returned candidate is declared disqualified to contest the election, the candidate who secured next highest votes than the returned candidate cannot be declared as elected.

The contention of the learned counsel for third respondent is that since petitioner has no locus standi to question the decision of the election Tribunal, as he was not a party to the proceedings before the Tribunal, there are no grounds to interfere with the order of the Tribunal, because third respondent got the second highest votes and since M. Nagaseshudu who polled more votes than third respondent was disqualified to hold the post.

I am unable to agree with the contention of the learned counsel for the third respondent that since the petitioner is not a party to the proceedings before the Election Tribunal, he cannot question the order of the Election Tribunal. The fact that petitioner is the brother of Nagaseshedu who was declared elected as sarpanch is neither denied nor disputed. So, petitioner is interested in the lis. Even otherwise also any resident of the village of which petitioner was declared elected by the Tribunal, can question the decision on the ground that the election Tribunal wrongly declared him elected, because, no person can be imposed as a Sarpanch, if he is not legally entitled to hold that post.

The Election Tribunal obviously did not keep in view Rule 4 (ii) of the Rules before passing the order impugned because the said Sub Rule reads:

> *" (ii) The petitioner may, if he so desires, in addition to calling in question the election of the returned candidates or of all or any of the returned candidates, as the case may be, claim a declaration that he himself or any other candidate has been duly elected, in which case he shall join as respondents to his petition all other candidates who were nominated for the election but who had not withdrawn before the polling."*

It is mandatory on the part of the third respondent, if he wanted that he should be declared elected after setting aside the election of Nagaseshudu, to make the other contesting candidates parties to the petition filed by him. Admittedly, he did not make the other candidates, who contested the election, parties to the petition.

Question whether 3rd respondent can be declared elected when he failed to implead the other contesting candidates parties to the petition, is not res integra because a Division Bench of this Court in Anajamma vs. S.Pushpamma and another () held that as Rule 4 (ii) of the Rules, postulates the election petitioner, who calls in question the election of the returned candidate and claims a declaration that he or any other candidate be declared duly elected, joining as respondents to his petition all other candidates who did ;not withdraw their nominations, cannot be declared elected, if he fails to implead the other candidates that contested the election the Tribunal was clearly in error in declaring the third respondent elected though he did not make the other contesting candidates parties to the petition.

Though Prakash Khandre Case (1 Supra) relied on by the learned counsel for the petitioner, arose under the Representatives of Peoples Act, 1951 the ratio therein that when more than two candidates contest an election, merely because the election of returned candidate is set aside, the person who got the next highest votes cannot be declared elected, would apply to petitions filed under the A.P. Panchayat Raj Act and the Rules made thereunder also because of Rule 4 (ii) of the Rules mandates the other contesting parties being made parties, so that they have an opportunity to oppose the prayer.

The Tribunal erred in proceeding with the trial of the case after the death of the returned candidate who alone was made a party, without considering the question whether the cause of action survied or not.

In the result, the petition is allowed and the order of the Election Tribunal in Election O.P.No.6 of 2001 declaring the third respondent elected, is set aside. No costs.

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Justice C.Y.Somayajulu

Date: 19th April, 2005.

Note:

L.R.Copy to be marked: YES

Dvs

One copy to the Honourable Mr. Justice C.Y.Somayajulu

(For his Lordships kind perusal)

Copies to:

1. The Election Officer, R.S. Rangapuram Village, Bethamcherla

Mandal, Kurnool District.
2 The District Collector/District Chief Election Officer, Kurnool.

3. Two CCs. to the GP for Panchayat Raj & Rural Development, High

Court Buildings, Hyderabad.(OUT)

4. 8 L.R. Copies.

5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6. The Secretasry, A.P.Advocate Asociation Library,

High Court Buildings, Hyderabad.

7. Two C.D.Coipies.

HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.20484 of 2004

19th April, 2005